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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 195

UNITED STATES OF AMERICA, PETITIONER

v.

BANK OF NEW YORK AND TRUST COMPANY

No. 196

UNITED STATES OF AMERICA, PETITIONER

v.

PRESIDENT AND DIRECTORS OF THE MANHATTAN COMPANY

No. 197

UNITED STATES OF AMERICA, PETITIONER

v.

LOUIS H. PINK

SUPPLEMENT TO PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

This memorandum supplementing the petition is intended to treat more fully certain points dealt with at length in the briefs of the respondents; and

to point out that the decision below is in conflict with a decision of the Sixth Circuit (p. 21, *infra*).

Respondents devote their briefs mainly to the merits of the cases, apparently conceding that if the property in question formerly belonged to the Soviet Government and now belongs to the United States, the state courts are without jurisdiction over that property.

Our opponents base their argument on the merits on two contentions:

1. That because of their confiscatory nature the Soviet decrees relied upon are contrary to our public policy and should not be given effect; and

2. That the claims in question were not embraced within the terms of the Litvinoff assignment.

It is important to bear in mind that in this entire matter there is not presented any question as to the rights of creditors arising out of domestic business.[1] All such creditors have been paid in full. The conflict is, in the main, between foreign creditors and the United States Government suing as the assignee of the Soviet Government.

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[1] The only unpaid claims which are alleged to have arisen in the United States, or in favor of United States nationals, are believed to be certain claims of attorneys for legal services to the defunct corporations. These claims are small in amount, and for purposes of the present petition may be disregarded.

I

AS TO THE EFFECT OF THE SOVIET DECREES

The funds here in question were originally a part of certain deposits made in New York by Russian insurance corporations as a condition precedent to doing business in New York, pursuant to the requirements of the New York Insurance Law (Section 27), which provided that the funds should be deposited for the "general benefit and security of its policyholders and creditors within the United States."

In August 1925 the Superintendent of Insurance of the State of New York took possession of the assets of the Russian insurance corporations in accordance with Section 63 of the Insurance Law of the State (Cons. Laws, chap. 28) to conserve them for the benefit of those entitled thereto. By that statute it was provided that the rights and duties of the Superintendent with reference to the corporations and their assets should be those theretofore exercised by and imposed upon ancillary receivers of foreign corporations in the State. Therefore, after the purpose of the deposit had been fulfilled, and policy holders and domestic creditors paid, it was the duty of the Superintendent of Insurance under the laws of New York [2]

[2] *Matter of People*, 238 N. Y. 147 (1924); 207 App. Div. 249 (1934); *Matter of People* (*First Russian Ins. Co.*), 255 N. Y. 415 (1931); *Matter of Second Russian Ins. Co.* (1926), 219 App. Div. 46; appeal dismissed, 244 N. Y. 606 (1927).

to transmit the surplus funds, if any, to the domiciliary liquidator, which here was the Liquidation Commission appointed by the Soviet decree (R. 62–63, *Bank of New York*).

It is submitted, therefore, that after the Superintendent had taken care of the policy holders and creditors, no further jurisdiction of the New York courts existed with respect to the surplus. As the highest court of the State of New York said in *Matter of People* (*Russian Reinsurance Co.*), 255 N. Y. 415, 427:

> The State of New York is not charged with a duty to wind up the business of these Russian corporations. In aid of domestic creditors, it winds up a branch of such a business conducted within its borders and in submission to its laws (*Matter of People* (*Norske Lloyd Ins. Co.*), 242 N. Y. 148). This done, its duty ends except to turn the surplus over to a competent custodian (Insurance Law, Sec. 63). * * * Russian directors, chosen by Russian shareholders in accordance with Russian law, must work out for themselves their problems of internal management. The surplus assets in this State are but a part of the total assets to be administered abroad. We disclaim a continuing duty of visitation and supervision. * * * We think the time is now at hand when the responsibility for the management of these foreign corporations should go back to the managing officers appointed by the shareholders. Our adminis-

trative machinery should be no longer clogged, our liquidator no longer burdened, our courts no longer vexed, with problems not our own.

Any rights in or to the said surplus were governed wholly by Russian law. Under Russian law, the Soviet Government became the owner thereof, and the Russian directors and shareholders ceased legally to exist. Having ceased to exist under the law that created them, they have ceased to exist everywhere. *Lazard Bros.* v. *Midland Bank, Ltd.* (1933), A. C. 289. In *Issaia* v. *Russo-Asiatic Bank,* 266 N. Y. 37, 43, the court referred to the Russo-Asiatic Bank as "a defendant who is dead."

Pursuant to the Russian decrees, ownership of the funds became vested in the Soviet Government, which has never subjected itself or its property to the jurisdiction of the New York courts.

No nation can be sued without its consent.[3] Nor can the property or personal rights of a sovereign be made the subject of litigation in the courts of another nation unless the foreign sovereign agrees to be a party to such litigation.[4] Whenever it appears in any litigation that the defendant, or a necessary or proper party in interest, is a foreign sovereign, the courts will decline to assume or re-

[3] *Exchange* v. *McFadden,* 7 Cranch 116, 137; *Oetjen* v. *Central Leather Co.,* 246 U. S. 297; *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347.

[4] *Underhill* v. *Hernandez,* 168 U. S. 250, 253; *Ricaud* v. *American Metal Co.,* 246 U. S. 304, 310.

tain jurisdiction unless the foreign sovereign consents or subjects himself to the jurisdiction.[5] This is true whether or not the foreign nation has been recognized *de jure* by the country before whose courts the litigation is pending.[6]

It is well settled that our courts will take judicial notice of the factual existence of a government which has not been recognized by the United States.[7] Thus, it is established that a government *de facto* cannot be sued without its consent. The Russian Government, then a *de facto* government, was therefore held immune from suit.[8]

In the liquidation proceedings in the state court, it did affirmatively appear that the Soviet Government was a claimant to all assets of the former Russian insurance corporations, by virtue of the decrees enacted in Russia with reference thereto. (See opinion of Court of Appeals in *Matter of People (Russian Reinsurance Co.)*, 255 N. Y. 415, 420, 425.) That fact having appeared, the court was without further jurisdiction over the surplus assets of the Russian corporations, the foreign sovereign not having consented to such jurisdiction.

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[5] *Mighell* v. *Sultan of Johore*, C. A. L. R. (1894) 1 Q. B. D. 149.

[6] *Wulfsohn* v. *Russian Socialist Federated Soviet Republic*, 234 N. Y. 372 (1923); *Luther* v. *Sagor* (1921) C. A. 3 K. B. 532; *Princess Olga* v. *Weisz* (1929) C. A. 1 K. B. 718.

[7] *Jones* v. *United States*, 137 U. S. 202; *Underhill* v. *Hernandez*, 168 U. S. 250; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 301; *Ricaud* v. *American Metal Co.*, 246 U. S. 304, 309.

[8] *Wulfsohn* v. *R. S. F. S. R.*, 234 N. Y. 372 (1923).

Our courts will, of course, take judicial notice of the recognition of a foreign government by the United States. When a recognition *de jure* of a government occurs, the recognition relates back to the time when the recognized government came into being. All the laws passed by the unrecognized government must be accepted as having been in full force from the time when they were promulgated.[9]

Thus, upon the recognition of the Soviet Government on November 16, 1933, our courts were required to give full force and effect to the decrees promulgated by the Soviet Government, including decrees whereby the insurance companies herein concerned were nationalized and all their property and assets, including the surplus funds here in question, were appropriated by the Soviet Government. It follows, therefore, that if the Soviet Government were in these actions now asserting its claim to the surplus funds in question, that claim would have to be admitted. Instead, the Soviet Government has assigned its claim to the funds to the United States Government, which now asserts the claim in its sovereign capacity.

It is submitted, therefore, that under well established principles of law the ownership of the Soviet Government of the surplus funds here in question

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[9] *Underhill* v. *Hernandez*, 168 U. S. 250, 253 (1897); *Republic of Peru* v. *Peruvian Co.* (1887), 36 Ch. Div. 489; *White, etc.* v. *Simmons* (1922), 127 L. T. R. 571 (N. S.), 581, 584; *Lazard Bros.* v. *Midland Bank* (1933), L. R. (A. C.), 289, 297 (H. of L.); *Williams* v. *Bruffy*, 96 U. S. 176, 186; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302.

prevented the New York State courts from acquiring any jurisdiction over said surplus funds. Nor did the New York State courts thereafter acquire any such jurisdiction.

If, on any theory, it may be said that the New York courts acquired jurisdiction over the surplus funds here in question, it is submitted that at least on and after November 16, 1933, when the United States gave *de jure* recognition to the Soviet Government, any such jurisdiction over the funds here in question no longer existed.

Respondents apparently concede that if the funds in question formerly belonged to the Soviet Government and now belong to the United States, the state courts are without jurisdiction over the property. But they contend that the Soviet decrees, being confiscatory, are contrary to public policy and should not be given effect; and hence the funds in question at no time belonged to the Soviet Government. To this there are two answers.

1. Considerations of local public policy may not be invoked to subject to the jurisdiction of a local court the property of a foreign subject.

This Court has held that a substantive defense may not be disregarded on the ground of local policy. In *Bradford Elec. Co.* v. *Clapper*, 286 U. S. 145, the Court said (p. 160):

> A State may, on occasion, decline to enforce a foreign cause of action. In so doing, it merely denies a remedy, leaving unimpaired

> the plaintiff's substantive right, so that he is free to enforce it elsewhere. But to refuse to give effect to a substantive defense under the applicable law of another State, as under the circumstances here presented, subjects the defendant to irremediable liability. This may not be done.

We submit that the same reasons apply in the instant case. If the courts of New York may dispose of the property of the Soviet Government, on the ground that they do not like the way in which the Soviet Government acquired that property, the result will be to subject a foreign sovereign to irremediable loss. The immunity of a sovereign rests on grounds of international comity, and should not be subjected to the varying notions of public policy entertained by local tribunals.

The executive branch of the Government, by the Chief Executive, has, in effect, declared what is the public policy of the United States with regard to the acts and decrees of the Soviet Government; and that declaration of policy has been tacitly approved by the legislative branch of the Government.[10] If the local courts may, as each sees fit,

[10] See Congressional Record, Vol. 78 (Jan. 11, 1934), pp. 460, 461, where, in the debate in the Senate, it is said that valid agreements have been "reached between the President and the representative of the Russian Soviet Union upon which the recognition of the Soviet Government is based", founded upon the exclusively "Executive function and prerogative to recognize foreign governments", and there was mentioned "the basis of contractual relationship upon which recognition has been granted * * *."

override the declared national policy by refusing, in effect, to carry out that policy, the consequences might be indeed serious. As was said by Chief Justice Taney in *Doe* v. *Braden,* 16 How. 635, 656:

> * * * it would be impossible for the executive department of the government to conduct our foreign relations with any advantage to the country, and fulfill the duties which the Constitution has imposed upon it, if every court in the country was authorized to inquire and decide whether the person who ratified the treaty on behalf of a foreign nation had the power, by its Constitution and laws, to make the engagements into which he entered.

See also *Terlinden* v. *Ames,* 184 U. S. 270. That language is equally apt in the present situation. It would be impossible for the Executive to conduct our foreign relations if every local court was authorized to superimpose its views as to morals and public policy with respect to the title and right of a foreign sovereign to make a formal agreement and assignment to the Government of the United States.

As said by Lord Scrutton, L. J., in *Luther* v. *Sagor* (1921), 3 K. B. 532, 558:

> But it appears a serious breach of international comity, if a state is recognized as a sovereign independent state, to postulate that its legislation is "contrary to essential principles of justice and morality." Such an allegation might well with a susceptible foreign government become a *casus belli;*

> and should in my view be the action of the Sovereign through his ministers, and not of the judges in reference to a state which their Sovereign has recognized. * * *

2. There is no "public policy", such as respondents assert, in regard to the actions of a foreign sovereign affecting its corporations and their stockholders and creditors.

Except in so far as the State where the transaction takes place may have exacted a pledge for the protection of local creditors, one who deals with a foreign corporation does so in peril of the domiciliary law. *Canada Southern Ry. Co.* v. *Gebhard,* 109 U. S. 527.

One of the reasons that States commonly exact security for permitting the local transaction of certain kinds of business is the uncertainty of rights against the corporation as established by domiciliary law. New York State has exacted such security in the present cases, and we are here concerned only with the surpluses after satisfaction of all creditors within the scope of the protection thus afforded. We submit that there is no public policy of the United States or of the State of New York concerned with the manner in which rights of foreign creditors or stockholders are dealt with by the Soviet Government.

One of the respondents suggests (p. 10, *Bank of New York*) that the public policy of the State of New York, as distinguished from the national policy, is involved. This we challenge. The Court

of Appeals of New York has not purported to pronounce a fixed rule of local policy, but to express its views of national policy upon a matter of international concern.

It should be noted, moreover, that that court has recently modified its earlier views on the effect of Soviet decrees, in the light of recognition. In *Dougherty* v. *Equitable Life Assurance Society,* 266 N. Y. 71, the court stated (p. 83):

> In Russia, where all these insured were, with one or two exceptions, these decrees were laws to be obeyed. They were the laws of their government. As to them the Soviet Republic was no body of bandits, confiscating property, but an existing government, carrying out new theories of insurance. If the Russian people, under their Soviet form of government, determined to abolish all private insurance for their citizens and establish a system of social protection by the State, that was their affair, not ours, and however objectionable we may consider the monopolization of all business, including insurance and banking, and the conduct of it thereafter by the government, we at least must admit that other people can try the experiment if they desire.

If, and in so far as, there is involved herein any question of giving extraterritorial effect to the decrees of the Soviet Government, it is predicated upon the assumption that the New York courts and the courts hereinbelow were necessarily dealing

with property legally situated within the State of New York. There is, however, authority for the view that the property here in question is not conclusively to be deemed situated within the State of New York or the United States.

The deposits of the insurance companies in the State of New York consisted primarily of bonds evidencing municipal, state, or federal obligations. As such they were, of course, intangibles. These bonds, it is believed, have been sold and their proceeds are now on deposit with the respondents in the various actions. Deposits of this nature are likewise intangibles. Applying, therefore, the doctrine of *mobilia sequuntur personam,* it would seem to follow that these intangibles had their situs at the domicile of the former owners, namely, the former Russian insurance corporations, and that therefore they were at least constructively under the control of Russia at the time the corporate lives of the insurance corporations were terminated.

Under the holdings of this Court, such doctrine unquestionably would be true for purposes of taxation. By analogy, therefore, it would seem to follow that they are subject to transfer to the successor of the dissolved corporations in accordance with the law of Russia. See *Blodgett* v. *Silberman,* 277 U. S. 1, 3–4.

Intangibles are held to include municipal obligations (*Farmers Loan Co.* v. *Minnesota,* 280 U. S. 204), stock certificates, United States bonds and

Treasury certificates of indebtedness, savings bank accounts, and life insurance policies (*Blodgett* v. *Silberman, supra*). The Court, in *Blodgett* v. *Silberman* stated (p. 9):

> At common law the maximum *"mobilia sequuntur personam"* applied. There has been discussion and criticism of the application and enforcement of that maxim, but it is so fixed in the common law of this country and of England, in so far as it relates to intangible property, including choses in action, without regard to whether they are evidenced in writing or otherwise and whether the papers evidencing the same are found in the State of the domicil or elsewhere, and is so fully sustained by cases in this and other courts, that it must be treated as settled in this jurisdiction whether it approve itself to legal philosophic test or not.

Likewise, this Court, in *Helvering* v. *Stockholms &c. Bank,* 293 U. S. 84, 92, said:

> Thus, intangible personal property has been held to have a situs at the domicile of the owner, although intangibles ordinarily have no actual situs and the paper evidence of their existence may be elsewhere. *First National Bank* v. *Maine,* 284 U. S. 312, 328–329.

II

AS TO THE SCOPE OF THE ASSIGNMENT

Assuming that prior to the Litvinoff assignment title to the funds in question was in the Soviet

Government (otherwise the question would be academic), respondents nevertheless contend that the assignment did not, and was not intended to, include assets such as these. But respondents' briefs give no valid reason for thinking that the assignment meant less than it said. Their contentions are grounded upon a narrow and strained construction of the language of the instrument, and completely ignore certain parts thereof.

By the assignment there was assigned to the United States "the amounts admitted to be due or that may be found to be due it [the Soviet Government], as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, * * *." (R. 42, *Bank of New York and Trust Company.*)

Respondents contend that the agreement must be interpreted in the same manner as contracts between individuals. But, as Judge Manton stated in his dissenting opinion below:

> The ultimate design of the two countries in executing this assignment was to transfer "the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America, and the claims of their nationals", to the broad plane of diplomacy, and by placing those claims beyond the reach of vexatious judicial action, to facilitate at one stroke, the adjustment of the delicate points at issue

between the two countries. No narrow or strained construction of that instrument is permissible under these circumstances.

This assignment was a part of the general scheme of recognition. In such an arrangement it was obviously impractical, if not impossible, to itemize all assets and claims covered thereby. Instead, broad general language, assigning *all* claims of the Soviet, was used, in order that claims such as these might be included. General language does not necessarily create ambiguity, but is often used, as here, to prevent ambiguity and avoid further dispute.

That a broad interpretation of the assignment was intended, is also shown by the fact that the Soviet Government thereby renounced its right to sue American nationals who may be indebted to it. Respondents' argument is, in effect, that, although the Soviet Government renounced its right to sue on the claims here in question, it still did not intend to assign the claims to the United States Government. This would mean that neither the Soviet Government nor the United States Government would be in a position to assert these claims. Such a situation obviously was not intended.

The Circuit Court of Appeals for the Second Circuit in *State of Russia* v. *National City Bank of New York* (1934), 69 F. (2d) 44, 48, considering the scope of the Litvinoff assignment, stated that "* * * it is apparent that the intent was /

to assign all the claims of the Soviet Government to the United States."

III

AS TO JURISDICTION [11]

We submit that the doctrine of priority of jurisdiction is in no way applicable to the situation herein presented. That doctrine is applicable only where one court has assumed the jurisdiction of a *res* and another court thereafter attempts to deal with the *res,* ousting the prior jurisdiction of the other court.

For several reasons the doctrine is not applicable herein:

(a) We submit that the New York State courts never acquired any jurisdiction over these surplus funds. It cannot necessarily be said that the custody taken by the Superintendent of Insurance, pursuant to order of the Supreme Court of the State of New York, was the custody of the court. When the Superintendent took possession of the property which formerly belonged to the insurance companies, he did so in his capacity as a member of

[11] We do not maintain (as respondents seem to think) and do not have to maintain that the Federal courts have exclusive jurisdiction of actions by the United States. We do maintain that the United States has its choice of forums, and that its sovereign immunity applies to its property as well as to its "person", and prevents it from being compelled to enter any forum against its will. No action *in rem* (if such these be) can deprive it of its right to decide when and where it will litigate its rights.

the executive branch of the state government.[12] The possession was his, not the court's which issued the order. Although the New York Insurance Law provides that he can only act under order of the court, there is nothing in the law to indicate that his possession is equivalent to the custody of the court.

(b) But, assuming the court thereupon acquired custody of the *res*, that court did not acquire any jurisdiction to adjudicate rights or title to the surplus funds, due to the fact that the said funds then belonged to a foreign sovereign which at no time subjected itself or its property to the jurisdiction of the court.

(c) Furthermore, as pointed out in petitioner's main brief, even if the state court did acquire juris-

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[12] In *Farrell* v. *Stoddard*, 1 F. (2d) 802, 803 (1924) (N. D. N. Y.), the court stated as follows:

> An examination of section 63 of the Insurance Law of the state of New York makes it clear that the superintendent of insurance is a public officer in the executive department of the state government, and that he still retains his character as a public officer when he acts as liquidator of insurance companies under the provisions of this statute. His power to act as custodian of the res comes alone from the statute. The judicial power cannot change or modify this statute, or affect his power in any respect whatever. True, the defendant must first apply to the court for an order to act as liquidator. That, however, merely means that the court must give the signal to start the machinery under which the superintendent, the agent of the executive power, acts. Thereafter the defendant, as the representative of the executive power, pays no heed to the court or its mandates. His chart is the statute under which he acts.

diction and custody of the *res,* it lost its control thereof when it relinquished the funds and ordered the deposit to be made to the Bank of New York and Trust Company and the Manhattan Company, as agents and depositaries of the insurance companies, under instructions to pay out only upon the order of "a court of competent jurisdiction."[18]

(d) But even if the state court acquired and retained jurisdiction and control until November 16, 1933, it clearly lost any jurisdiction over the property on and after that date, when title vested in the United States as assignee of the Soviet Government, to which the United States accorded *de jure* recognition on that date.

Consequently, even if the present suit by the United States be deemed a suit *in rem,* there is no conflict with any *existing* jurisdiction *in rem* in the state court.

(e) But, as shown in petitioner's main brief, the present suits (for an *accounting*) instituted by the United States are not suits *in rem,* but *in personam.*

In *Brown* v. *Duffin,* 13 F. (2d) 708 (1926) (C. C. A. 6th), the court was dealing with a procedural

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[18] It is to be noted that the deposit of the funds in the Bank of New York & Trust Co., and the Manhattan Company, subject to court order as noted above, was an *alternative* to relinquishing the funds to the surviving directors themselves. *Matter of People* (*Northern Ins. Co.*), 255 N. Y. 433, 435. Had the latter course been adopted, it certainly could not be said that thereafter the state court still maintained its custody and control of the *res.*

situation similar to that herein, and held that an action for accounting is not an action *in rem*.

It may be that any decree herein, adjudicating title to the funds in question to be in the United States, would thereupon have to be proved and enforced in proceedings in the state court. But the rendition of such a decree would involve no interference or conflict with any jurisdiction *in rem* that may heretofore have been assumed by the state court.

We submit that the asserted distinction of *Waterman* v. *Canal-Louisiana Bank*, 215 U. S. 33, is untenable. It is argued that in that case the executor had a personal liability, whereas in this case the depositary has no such personal liability. We submit that so far as personal liability is concerned the depositary here is in no better position than was the executor there. The present suits are *in personam*, even though any rights adjudicated herein may have to be satisfied out of a *res* in the possession of the state court. Substantially the same situation existed in the *Waterman* case.

(f) Respondent Bank of New York and Trust Company contends (brief, pp. 3, 5, 7) that the proceeding now pending in the state court is a supplement and continuation of the original liquidation proceeding instituted and carried out by the Superintendent of Insurance, and therefore is a proceeding *in rem*. Even assuming (contrary to *Farrell*

v. *Stoddard, supra*) that the state court acquired custody and control of the property by virtue of the liquidation proceedings instituted by the Superintendent of Insurance, nevertheless, under New York law the Superintendent's authority in the liquidation ended when he had paid the domestic creditors and policyholders. Hence the theory upon which respondent contends that the pending proceeding is *in rem,* fails.

For the above reasons, we submit, the doctrine of priority of jurisdiction is not applicable.

The decisions herein below are in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in *Brown* v. *Duffin, supra,* in which it was held that an action for an accounting is not an action *in rem,* within the rule respecting priority of jurisdiction.

In *Brown* v. *Duffin* an accounting suit was begun in the state court. Thereafter a receivership proceeding was instituted in the Federal court. It was held that the state court action, being *in personam,* did not interfere with the receivership proceeding in the Federal court. The court stated as follows (p. 710):

> There is, however, a third class of suits, in which, though the custody of property is not essential to attain the object of the suit, yet during the progress of the case such custody may become necessary or desirable, as collateral to the full measure of relief,

> which was primarily sought in personam. These cases are only inchoately in rem, and the exclusive jurisdiction dated either from the actual taking of possession, or, at the earliest, from some specific request that the court do take possession. We put the Brown state court case in this class. It did not ask that the court seize any property. *A judgment in equity that defendant first account, and then pay over, is a judgment in personam.* Yet it showed a body of property with the trustees, for which a receivership might well be later advisable, and the prayer for general relief would have supported such a result. Hence it was, up to the time of filing the federal bill, a suit in personam, and did not bar the general jurisdiction of the federal court. (Italics ours.)

In the instant cases the court below has held that these actions for accounting are actions *in rem* and that the rule of priority of jurisdiction is therefore applicable, and that the state court proceedings preclude the suits at bar.

It is respectfully submitted that the writs of certiorari should be granted in order that this conflict may be resolved.

STANLEY REED,
Solicitor General.
DAVID E. HUDSON,
Special Assistant to the Attorney General.

OCTOBER 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935